Supreme Court, U.S.
FILED
NOV 2 2006
OFFICE OF THE CLERK

No. 05-802

IN THE

Supreme Court of the United States

LISA BROWN, A MARRIED WOMAN AND HER MARITAL COMMUNITY, PETITIONER

v.

LYNNE KALINA, KING COUNTY DEPUTY PROSECUTING ATTORNEY AND HER MARITAL COMMUNITY; ET AL.,

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Is a person who brings a cause of action under 42 U.S.C. § 1983 in federal court required to prove or exhaust state administrative remedies?

2. Is a person who brings a cause of action under 42 U.S.C. § 1983 in federal court required to plead anything other than a person deprived her of a federal right and that the person acted under color of state law?

3. Do County officials violate a person's right of access to the federal courts under *Bill Johnson's Restaurants, Inc. v. NLRB*, 461 U.S. 731 (1983) and the person's rights under the First and Fourteenth Amendments when the officials destroy and alter evidence relevant to a federal civil rights action?

4. Did the Petitioner satisfy the "pleading the class requirement" of 42 U.S.C. § 1985 when the Petitioner alleged that the Respondents destroyed and altered evidence to prevent Mrs. Brown from litigating a federal civil rights action in which she alleged she was wrongfully discharged shortly after she informed King County she was pregnant?

5. Does an internal memo ordering the destruction of documents relevant to a federal civil rights case and actions to destroy and alter documents satisfy the "corruptly persuade" element of a claim under 18 U.S.C. § 1512(b)(2) and the nexus requirement of *Arthur Andersen v. United States*, Case No. 04-368, *slip op.* (May 31, 2005) for purposes of a civil cause of action under 18 U.S.C. § 1964?

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OPINIONS BELOW

The unpublished judgment of the Court of Appeals for the Ninth Circuit Court of Appeals in the case of *Lisa Brown v. Lynne Kalina*, et al., C.A. No. 04-35374 decided and filed August 4, 2005 affirming the District Court's order granting the Defendants' Motion for Judgment on the Pleadings, is set forth in the Appendix hereto (App. 1a).

The unpublished order of the Court of Appeals for the Ninth Circuit Court of Appeals in the case of *Lisa Brown v. Lynne Kalina*, et al., C.A. No. 04-35374 decided and filed August 4, 2005 affirming the District Court's order granting the Defendants' Motion for Judgment on the Pleadings, is set forth in the Appendix hereto (App. 2a).

The unpublished judgment of the U.S. District Court for the Western District of Washington in the case of *Lisa Brown v. Lynne Kalina*, et al., Case No. CV04-0127 decided and filed April 13, 2004 granting the Defendants' Motion for Judgment on the Pleadings, is set forth in the Appendix hereto (App. 4a).

The unpublished order of the U.S. District Court for the Western District of Washington in the case of *Lisa Brown v. Lynne Kalina*, et al., Case No. CV04-0127 decided and filed April 13, 2004 granting the Defendants' Motion for Judgment on the Pleadings, is set forth in the Appendix hereto (App. 5a).

JURISDICTION

The decision of the United States Court of Appeals for the Ninth Circuit affirming the District Court's granting of the Respondents' motion for

judgment on the pleadings was entered on August 4, 2005 (App. p. 1a, 2a).

The petition for writ of certiorari is filed within (90) days of the date of the court of appeals' denial of the Petitioner's timely filed petition for rehearing en banc. 28 U.S.C. Section 2101(c). Revised Supreme Court Rule 13.3.

The jurisdiction of this Court is invoked pursuant to the provisions of 28 U.S.C. Section 1254(1).

The petition for writ of certiorari is brought on the grounds that a United States court of appeals has decided an important question of federal law that has not been, but should be, settled by this Court, or has decided an important question in a way that conflicts with relevant decisions of this Court. Revised Supreme Court Rule 10(c). The Petitioner also requests this Court exercise its supervisory power under Revised Supreme Court Rule 10(a).

RELEVANT PROVISIONS INVOLVED

See appendix.

STATEMENT

The Petitioner Lisa Brown ("Mrs. Brown") is a court reporter whose employment was terminated by King County and King County Superior Court ("King County") shortly after she informed her supervisors she was pregnant. A new position was then advertised and after Mrs. Brown applied for it, she was told a hiring freeze had been placed on the new position. Then the son of the senior court reporter was hired, but Mrs. Brown was not told the hiring freeze had been lifted. The position also required that the court

reporter be a graduate of a court reporter school or a college graduate. The person who received the job was not a graduate of a court reporter school and he was not a college graduate. Mrs. Brown was a graduate of a court reporter school with an advanced court reporter qualification. Mrs. Brown brought a civil rights case, Brown v. King County, U.S. District Court Case No. CV01-0430 ("Brown I").

In Brown I, Mrs. Brown submitted a tort clam form to King County as required by state law for pendant state claims. While she was waiting for the statutory time to expire, she also submitted a Public Records Act request to obtain documents related to her case. Respondent Slonecker then quoted the applicable nepotism rule from a county manual in a letter to Petitioner's counsel. Respondent Scott then issued a memo to the employees who had the requested employee manual to destroy the copies of the manual. App. 14a. Petitioner obtained the memo, reminded Respondent Slonecker that she was preparing to file a federal civil rights action, and requested through Slonecker that Scott rescind the memo and preserve all copies of the manual and all employment documents related to the federal civil rights case Mrs. Brown was preparing to file. App. 15a. Scott refused to rescind the memo.

When the employee manual was produced it contained a nepotism rule which conflicted with the Slonecker letter. The manual also suggested all employees were at-will. As discovery progressed, a large number of documents showed signs of tampering. Slonecker then submitted a declaration stating her initial quote of the nepotism rule in the letter was a mistake, and the new quote which added an "and" after the second way a person could show nepotism was the

correct quote. The first quote did not have the and, which meant the list of three ways of showing nepotism was disjunctive. After the alteration alleged in the Complaint, Mrs. Brown was prejudiced in her claims. Many supporting documents King County provided showed signs of alteration.

King County also refused to provide the applicable union agreement. Petitioner checked the union agreement attached to the King County Ordinance and it did not contain a just cause provision. King County repeatedly argued their employee manual which was produced after the document destruction memo and the manual stated that employees could be fired at any time for any reason. King County argued that since the employees were at-will, the Petitioner had no property right and therefore she could not bring a 42 U.S.C. § 1983 cause of action against the county.

It was becoming clear that the Respondents were destroying documents that did not support them and they were altering documents as the case progressed, and the documents had been spoliated to the point that it was unclear what parts, if any, of the documents produced by the Respondents were authentic. Mrs. Brown then researched whether a county attorney and other county officials could be liable under 42 U.S.C. § 1983 for destroying and altering evidence. This research revealed the case of *Kalina v. Fletcher*, 522 U.S. 118 (1997) in which Respondent Kalina took actions similar to the actions alleged by Mrs. Brown when Respondent Kalina submitted false evidence to a court in the form of a false affidavit while working in her position as an attorney for King County. Mrs. Brown then moved the District Court in Brown I to add a spoliation cause of action, and the motion was denied. The District Court then

granted King County's Motion for Summary Judgment. Mrs. Brown appealed the decision in Brown I, but the Ninth Circuit Court of Appeals denied the appeal in an unpublished decision under Case No. 02-36117.

During the research for the appeal in Brown I, Mrs. Brown discovered that the union agreement attached to the King County ordinance she checked in the public record was not the actual union agreement. App. 19a. The actual union agreement states that all employees can only be terminated for "just cause". App. 20a. This was further evidence that the section of the employee manual that stated all employees were at-will had been altered and a new union agreement had been drafted and was substituted in the public record for the actual union agreement.

Petitioner then filed the present civil action, U.S. District Court Case No. CV04-0127 ("Brown II"). The District Court granted the Respondents' Motion for Judgment on the Pleadings and denied the Petitioner's Motion for Summary Judgment. Mrs. Brown then appealed the order and judgment to the Ninth Circuit Court of Appeals, which denied the appeal without oral argument. App. 1a, 2a.

Mrs. Brown has now brought to this Court her petition seeking a writ of certiorari to the United State Court of Appeals for the Ninth Circuit.

REASONS FOR GRANTING THE PETITION

1. The Decision Below misapplies the Court's Rule in *Porter v. Nussle*, 534 U.S. 516 (2002) regarding whether a person bringing a claim under 42 U.S.C. § 1983 is required to prove or plead state administrative remedies.

The Court below ruled that Mrs. Brown was required to plead and exhaust state law administrative remedies before she could bring claims under 42 U.S.C. § 1983, and relied on *Hudson v. Palmer*, 468 U.S. 517 (1984). App. 9a. After *Hudson*, which was a prisoner case, the U.S. Congress specifically spoke on this issue in the Prison Litigation Reform Act of 1995 ("PLRA") and limited the exhaustion requirement to prisoners only. 42 U.S.C. § 1997e at App. 23a. This Court then affirmed the legislative intent of the PLRA in *Porter v. Nussle*, 534 U.S. 516 (2002), in which the Court stated in a unanimous opinion that persons pursuing civil rights claims under 42 U.S.C. § 1983 need not exhaust state administrative remedies before filing suit in court and the PLRA and *Hudson* case apply to prisoner cases. *Porter*, 534 U.S. at 523 (2002)(quoting 42 U.S.C. § 1997e)).

Mrs. Brown is a court reporter who was discriminated against after she became pregnant, after four county officials realized the strength of her claims, they destroyed and altered evidence and tampered with witnesses to prevent her from using the evidence in her federal civil rights action. After the key documents, including the employee manual, union agreement, and nepotism rules had been destroyed and new documents fabricated in her first civil rights action, Mrs. Brown moved the District Court to amend the complaint to